

AMENDED IN ASSEMBLY MARCH 25, 1998  
AMENDED IN ASSEMBLY MARCH 19, 1998  
AMENDED IN ASSEMBLY FEBRUARY 5, 1998  
AMENDED IN ASSEMBLY JULY 1, 1997  
AMENDED IN SENATE MAY 19, 1997  
AMENDED IN SENATE MAY 5, 1997  
AMENDED IN SENATE MARCH 31, 1997

**SENATE BILL**

**No. 1200**

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**Introduced by Senator Thompson**

February 28, 1997

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An act to amend Sections 25017, 25101.1, 25102.1, 25202, 25230.1, 25608.1, and 25611 of, and to add Section 25009.1 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1200, as amended, M. Thompson. Corporations: securities.

(1) Existing provisions of the General Corporation Law exempt from the definition of offer and sale of securities, any act, incident to a transaction or reorganization approved by a state or federal court in which securities are issued and exchanged for one or more outstanding securities, claims, or property interests, or partly in that exchange and partly for cash.

This bill would provide that those provisions shall not prohibit a court from applying certain statutory protections with respect to approving any transaction involving a rollup participant.

The bill would also contain legislative findings and declarations.

(2) The Corporate Securities Law of 1968 requires the qualification of a security before it may be offered or sold in an issuer or nonissuer transaction in this state. Certain classes of securities are exempt from, or not subject to, the state qualification requirement, if certain other requirements are met.

This bill would modify certain of those requirements.

(3) The Corporate Securities Law of 1968 defines an investment adviser as a person who is compensated for advising other persons as to the value of securities or the advisability of investing, purchasing, or selling securities, or who publishes evaluations of securities, and provides that it is generally unlawful to conduct business as an investment adviser without obtaining a certificate from the Commissioner of Corporations, unless otherwise exempted. A person registered, licensed, or qualified as an investment adviser by another state, or exempt from registration, licensing, or qualification by that state, who has not previously had any certificate denied or revoked in this state, is exempt from the requirement to obtain a certificate if the person does not have a place of business in this state and had fewer than 6 clients during the preceding 12-month period who are California residents.

This bill would instead provide that an investment adviser, as defined, is exempt from the requirement to obtain a certificate if the person does not have a place of business in this state and had fewer than 6 clients during the preceding 12-month period who are California residents.

(4) The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 25009.1 is added to the Corporations Code, to read:

25009.1. “Investment adviser” does not include persons excepted from the definition of “investment adviser” by Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq., as amended), except that with regard to those persons the commissioner may investigate and bring enforcement actions with respect to fraud and deceit, including and without limitation fraud and deceit under Section 25235, and any rules of the commissioner adopted thereunder.

SEC. 2. Section 25017 of the Corporations Code is amended to read:

25017. (a) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. “Sale” or “sell” includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(b) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing constitutes a part of the subject of the purchase and is considered to have been offered and sold for value.

(d) A purported gift of assessable stock involves an offer and sale.

(e) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

1 (f) The terms defined in this section do not include:  
2 (1) any bona fide secured transaction in or loan of  
3 outstanding securities; (2) any stock dividend payable  
4 with respect to common stock of a corporation solely  
5 (except for any cash or scrip paid for fractional shares) in  
6 shares of such common stock, if the corporation has no  
7 other class of voting stock outstanding; provided, that  
8 shares issued in any such dividend shall be subject to any  
9 conditions previously imposed by the commissioner  
10 applicable to the shares with respect to which they are  
11 issued; or (3) any act incident to a transaction or  
12 reorganization approved by a state or federal court in  
13 which securities are issued and exchanged for one or  
14 more outstanding securities, claims, or property interests,  
15 or partly in that exchange and partly for cash, and nothing  
16 in this division shall be construed to prohibit a court from  
17 applying the protections described in Section 25014.7 or  
18 25140 and the regulations adopted thereunder when  
19 approving any transaction involving a rollup participant.

20 SEC. 3. Section 25101.1 of the Corporations Code is  
21 amended to read:

22 25101.1. The following securities are not subject to  
23 Sections 25110, 25120, and 25130:

24 (a) A security that is offered or sold in a transaction  
25 that is exempt from registration under Section 4(1) or  
26 4(3) of the Securities Act of 1933 (15 U.S.C. 77r) pursuant  
27 to Section 18(b)(4)(A) of that act, if the issuer, other than  
28 a foreign (other country) issuer described in subdivision  
29 (b), of the security files the required reports with the  
30 Securities and Exchange Commission pursuant to Section  
31 13 or 15(d) of the Securities Exchange Act of 1934, (15  
32 U.S.C. 78a et seq.).

33 (b) A security of a foreign (other country) issuer that  
34 avails itself of the exemption from registration under  
35 Section 12(g)(3) of the Securities Exchange Act of 1934  
36 is subject to the qualification requirements of Sections  
37 25110, 25120, and 25130, unless the issuer is a reporting  
38 company under the Securities Exchange Act of 1934 and  
39 files the required reports under Section 13 or 15(d) of that  
40 act.



1 SEC. 4. Section 25102.1 of the Corporations Code is  
2 amended to read:

3 25102.1. The following transactions are not subject to  
4 Sections 25110, 25120, and 25130:

5 (a) Any offer or sale of a security to a “qualified  
6 purchaser” as that term is defined by rule of the Securities  
7 and Exchange Commission pursuant to Section 18(b)(3)  
8 of the Securities Act of 1933 (15 U.S.C. 77r), and all the  
9 following requirements are met:

10 (1) A notice is filed with the commissioner prior to an  
11 offer in this state, along with any documents filed with the  
12 Securities and Exchange Commission in annual or  
13 periodic reports that the commissioner by rule or order  
14 deems appropriate.

15 (2) A consent to service of process under Section 25165  
16 is filed with the notice required by paragraph (1).

17 (3) Payment of a notice filing fee provided for in  
18 subdivision (b) of Section 25608.1.

19 (b) Any offer and sale of a security with respect to a  
20 transaction that is exempt from registration under  
21 Section 4(4) of the Securities Act of 1933 pursuant to  
22 Section 18 (b) (4) (B) of that act.

23 (c) Any offer or sale of a security with respect to a  
24 transaction that is exempt from registration under the  
25 Securities Act of 1933 pursuant to Section 18(b)(4)(C) of  
26 that act.

27 (d) Any offer or sale of a security with respect to a  
28 transaction that is exempt from registration under the  
29 Securities Act of 1933 pursuant to Section 18(b)(4)(D) of  
30 that act, and all the following requirements are met:

31 (1) A notice in the form of a copy of the completed  
32 Form D (17 C.F.R. 239.500) filed with the Securities and  
33 Exchange Commission is filed with the commissioner  
34 within 15 days of the first sale in this state, along with  
35 documents filed with the Securities and Exchange  
36 Commission in annual or periodic reports that the  
37 commissioner by rule or order deems appropriate.

38 (2) A consent to service of process under Section 25165  
39 is filed with the notice as required by paragraph (1).

1 (3) Payment of the notice filing fee provided for in  
2 subdivision (c) of Section 25608.1.

3 (e) Notwithstanding the language of subdivisions (a),  
4 (b), (c), and (d) of this section, an issuer may file an  
5 application for qualification pursuant to Sections 25111,  
6 25112, 25113, 25121, 25131, or 25142.

7 SEC. 5. Section 25202 of the Corporations Code is  
8 amended to read:

9 25202. (a) An investment adviser shall not be subject  
10 to Section 25230 if (1) the investment adviser does not  
11 have a place of business in this state and (2) during the  
12 preceding 12-month period has had fewer than six clients  
13 who are residents of this state.

14 (b) For the purpose of this section only, “client” has  
15 the same meaning as the term “client” is defined by the  
16 Securities and Exchange Commission under the rule  
17 adopted pursuant to Section 222(d) of the Investment  
18 Advisers Act of 1940, as amended. Also, for the purpose of  
19 this section only, “client” does not mean other  
20 investment advisers, broker-dealers, banks, savings and  
21 loan associations, trust companies, insurance companies,  
22 investment companies registered under the Investment  
23 Company Act of 1940, pension and profit-sharing trusts  
24 (other than self-employed individual retirement plans),  
25 or other institutional investors or governmental agencies  
26 or instrumentalities designated by rule or order of the  
27 commissioner.

28 SEC. 6. Section 25230.1 of the Corporations Code is  
29 amended to read:

30 25230.1. (a) A person that is registered under Section  
31 203 of the Investment Advisers Act of 1940 as an  
32 investment adviser is not subject to the requirement of  
33 obtaining a certificate under Section 25230, but may not  
34 conduct business in this state unless the person has fewer  
35 than six clients as specified in Section 25202 or unless the  
36 person first complies with subdivision (b). An investment  
37 adviser representative that has a place of business in this  
38 state may be required to obtain a certificate pursuant to  
39 Section 25231.

40 (b) A person subject to subdivision (a) shall:

(1) File with the commissioner an annual notice, consisting of those documents filed with the Securities and Exchange Commission pursuant to the securities laws that the commissioner by rule or order deems appropriate or, in lieu thereof, a form prescribed by the commissioner, and a consent to service of process under Section 25240.

(2) Pay the notice filing fee provided for in subdivision (d) of Section 25608.1.

(c) No investment adviser representative, on behalf of an investment adviser subject to subdivision (a), may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analysis concerning securities to be published by the investment adviser, unless the investment adviser representative has complied with rules that the commissioner may adopt for the qualification and employment of investment adviser representatives.

(d) Subdivision (a) does not prohibit the commissioner from investigating and bringing enforcement actions with respect to fraud or deceit, including and without limitation, fraud or deceit under Section 25235 and the rules of the commissioner adopted thereunder, against an investment adviser or an investment adviser representative.

SEC. 7. Section 25608.1 of the Corporations Code is amended to read:

25608.1. (a) The fee for an investment company filing a notice pursuant to subdivision (b) of Section 25100.1 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(b) The fee for an issuer filing a notice pursuant to subdivision (a) of Section 25102.1 is six hundred dollars (\$600).

1 (c) The fee for an issuer filing a notice pursuant to  
2 subdivision (d) of Section 25102.1 is three hundred dollars  
3 (\$300).

4 (d) The fee for an investment adviser filing a notice  
5 pursuant to subdivision (b) of Section 25230.1 is one  
6 hundred twenty-five dollars (\$125) and the fee for filing  
7 a notice or report required by rule adopted pursuant to  
8 subdivision (c) of Section 25230.1 is twenty-five dollars  
9 (\$25).

10 SEC. 8. Section 25611 of the Corporations Code is  
11 amended to read:

12 25611. The commissioner may prepare and make  
13 available to interested persons lists of persons whose  
14 securities are qualified for trading purposes in this state,  
15 are exempt from qualification, or are not subject to  
16 qualification as the commissioner may determine to be  
17 necessary or desirable, and the commissioner may make  
18 reasonable charges for those lists to defray the expenses  
19 of preparation and dissemination.

20 SEC. 9. In enacting Section 4 2 of this act, the  
21 Legislature finds and declares that the Thompson-Killea  
22 Limited Partnership Act of 1992 added specified  
23 protections for limited partners in connection with rollup  
24 transactions, and that the courts may be reviewing rollup  
25 transactions through the court approval process without  
26 recognizing the availability of the important protections  
27 afforded to investors under the Corporate Securities Law  
28 of 1968. Therefore, the courts are encouraged to apply the  
29 protections described in Section 25014.7 or 25140 of the  
30 Corporations Code and any regulations adopted  
31 thereunder to ensure that these investor protections are  
32 not overlooked or avoided through the court approval  
33 process.

